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December 2, 2020

Via ECF Only

Honorable Gregory H. Woods, U.S.D.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: **United States v. Edward Shin**
Case No.: 1:19-cr-00552-GHW

Dear Judge Woods:

I represent Edward Shin in the above-referenced matter. Certain pretrial submissions, including motions *in limine*, *voir dire* requests, jury instructions and proposed verdict forms are currently scheduled to be filed by next Tuesday, December 8, 2020. I am writing to request that, for the reasons set forth below, that this date be moved to January 15, 2021. I have spoken to the Government and they consent to this request.

More broadly, I would like to address overall scheduling and specifically the trial date. This case is presently scheduled for trial for either February 22, 2021 or March 15, 2021. As Your Honor is aware, Mr. Shin is not in custody. I have received Chief Judge Colleen McMahon's recent Order postponing all jury

trials from December 1, 2020 through January 15, 2021 and understand that there is a significant backlog developing particularly involving defendants in custody.

My client is a 57-year-old man. He suffers from diabetes and high blood pressure. He also is still recovering from a serious facial injury incurred several years ago when he fell down a flight of stairs. I am 64-years-old and, as the Court may recall, underwent two significant cancer surgeries on my leg in November and December 2019 for which I was essentially home recovering through the end of February 2020. My co-counsel Robert Basil is 69-years-old. We anticipate that to be most effective during trial, we will need to meet among ourselves and others before and after trial sessions and will likely need to stay in a hotel in New York City. Mr. Shin and his counsel are concerned about undertaking a trial during this pandemic which will involve such meetings as well as jury selection and multiple witnesses, notwithstanding the District Court's current COVID-19 protocols. Given our respective ages and health issues, all three of us are at risk of serious complications should we become infected with coronavirus. Mr. Shin has already and will continue to waive the Speedy Trial Act. We strongly request the Court to consider an early summer trial date for these health concerns. The Centers for Disease Control and Prevention have stated that the general public is likely to be vaccinated by May or June, according to the enclosed article from *The New York Times* dated

December 1, 2020. I understand that the Government will be sending a separate letter to Your Honor regarding the trial date.

In addition, it appears unlikely in any event that we will succeed in getting this matter to trial in late February or early March due to in-custody backlog and limited courtroom space. Nevertheless, even in the event that those trial dates are realistic, we are requesting additional time to complete the pretrial matters. Even on the current schedule, the trial is several months away and it is difficult without the Jencks and other material to draft and prepare motions *in limine* and similar trial documents. I note that Your Honor's individual rules for criminal practice (as revised on November 12, 2020) at paragraph 6 provide that, unless otherwise ordered, requests to charge, proposed *voir dire* and proposed verdict forms are to be filed via ECF no later than three weeks prior to the trial date. The proposed January 15, 2021 date would result in the materials being provided to the Court five weeks before the earliest possible trial date.

Accordingly, for the above reasons, I respectfully request that the Court reschedule the trial date to early summer of 2021. Alternatively, we are requesting that the Court move the December 8, 2020 due date to January 15, 2021. We would welcome a telephone conference with Your Honor to discuss these matters if the Court deems a call appropriate and useful.

Respectfully submitted,

/s/ Paul B. Brickfield

Paul B. Brickfield

enc.

cc: Robert Basil, Esq. (via ECF only w/ enc.)
Assistant U.S. Attorney Anden Chow (via ECF only w/ enc.)
Assistant U.S. Attorney Tara LaMorte (via ECF only w/ enc.)

The New York Times <https://nytl.ms/33yNS0E>

Long-Term-Care Residents and Health Workers Should Get Vaccine First, C.D.C. Panel Says

The C.D.C. director will decide by Wednesday whether to accept the recommendation. States aren't required to follow it, but most are expected to.



By Abby Goodnough

Dec. 1, 2020

WASHINGTON — An independent panel advising the Centers for Disease Control and Prevention voted Tuesday to recommend that residents and employees of nursing homes and similar facilities be the first people in the United States to receive coronavirus vaccines, along with health care workers who are especially at risk of being exposed to the virus.

The panel, the Advisory Committee on Immunization Practices, voted 13 to 1 during an emergency meeting to make the recommendation. The director of the C.D.C., Dr. Robert R. Redfield, is expected to decide by Wednesday whether to accept it as the agency's formal guidance to states as they prepare to start giving people the shots as soon as two weeks from now.

"We are acting none too soon," said Dr. Beth Bell, a panel member and global health expert at the University of Washington, noting that Covid-19 would kill about 120 Americans during the meeting alone.

States are not required to follow the panel's recommendations, but they usually do. The final decision will rest with governors, who are consulting with their top health officials as they complete distribution plans.

The new recommendation is the first of several expected from the panel over the coming weeks, as vaccines developed by Pfizer and Moderna go through the federal approval process, on the thorny question of which Americans should be at the front of the long line to get vaccinated while supply is still scarce. The panel described it as an interim recommendation that could change as more is learned about how well the vaccines work in different age groups and how well the manufacturers keep up with demand.

The roughly three million people living in long-term care and those who care for them are a relatively clear target; 39 percent of deaths from the coronavirus have occurred in such facilities, according to an analysis by The New York Times. But states and health systems will ultimately have to decide which of the nation's 21 million health care workers should qualify to receive the first doses, as there won't be enough at first for everyone.

Pfizer and Moderna have estimated that they will have enough to vaccinate, at most, 22.5 million Americans by year's end, with the required two doses, a few weeks apart. The C.D.C. will apportion the supply among the states, with the initial allocation proportional to the size of each state's adult population.

The only member of the committee to vote against the recommendation was Dr. Helen Talbot, an infectious-disease specialist at Vanderbilt University, who expressed discomfort with putting long-term-care residents in the first priority group because the vaccines' safety had not been studied in that particular population. "We enter this realm of 'we hope it works and we hope it's safe,' and that concerns me on many levels," she said before the vote.

But most panel members who offered opinions said they thought the high death rate among that group made it imperative to include it.

Dr. José Romero, the chairman of the panel, said that he felt strongly that its process had adhered to its core principles: "maximizing benefit and minimizing harm," promoting justice and addressing health inequities. Dr. Beth Bell, the co-chair, acknowledged that all of the members would have liked more data from clinical trials but said that because of the pandemic emergency, "we need to act."

CORONAVIRUS BRIEFING: An informed guide to the global outbreak, with the latest developments and expert advice.

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The panel, whose 14 voting members have expertise in vaccinology, immunology, virology, public health and other relevant fields, has hinted that the next priority group it will recommend for vaccination — "Phase 1b" — will be so-called essential workers, a huge group numbering more than 85 million. A division of the Department of Homeland Security has come up with a list of workers states should consider counting in that group; it includes teachers and others who work in schools, emergency responders, police officers, grocery workers, corrections officers, public transit workers and others whose jobs make it hard or impossible to work from home.



Dr. Robert Redfield, the C.D.C. director, during an October briefing at the agency's headquarters in Atlanta. Jenni Glusman/EPA, via Shutterstock

After essential workers, the committee is leaning toward recommending vaccination of adults with medical conditions that put them at high risk of coronavirus infection, such as diabetes or obesity, and everyone over 65. But some states might diverge to an extent, possibly choosing, for example, to vaccinate residents over 75 and then some types of essential workers.

All other adults would follow the initial groups. The vaccine has not yet been thoroughly studied in children, so people under 18 would not be eligible yet.

For at least a month or two, there will not be nearly enough vaccine to cover everyone in the initial groups. Dr. Moncef Slaoui, who leads the Trump administration's Operation Warp Speed, said Tuesday morning in an interview with The Washington Post that Pfizer and Moderna would be able to provide an additional 60 to 70 million doses in January "if all goes well." Since each person gets two shots, that would only be enough for 55 million people at most through the end of January — about 22 percent of the nation's roughly 255 million adults.

Production will continue to increase in February and March, Dr. Slaoui said, with the hope that two new vaccines, from AstraZeneca and Johnson & Johnson, will gain F.D.A. approval.

"So very quickly, we start having more than 150 million doses a month in March, April, May," he added. He and other federal officials have said that the general public is likely to be able to be vaccinated by May or June.

The Road to a Coronavirus Vaccine

Words to Know About Vaccines

Confused by the all technical terms used to describe how vaccines work and are investigated? Let us help:

- **Adverse event:** A health problem that crops up in volunteers in a clinical trial of a vaccine or a drug. An adverse event isn't always caused by the treatment tested in the trial.
- **Antibody:** A protein produced by the immune system that can attach to a pathogen such as the coronavirus and stop it from infecting cells.
- **Approval, licensure and emergency use authorization:** Drugs, vaccines and medical devices cannot be sold in the United States without gaining approval from the Food and Drug Administration, also known as licensure.

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The C.D.C. panel was originally not supposed to vote on its recommendations until after the F.D.A. had approved a vaccine. But it bumped up the timing to give states more guidance as they complete their distribution plans, which must be submitted to the C.D.C. on Friday.

On Tuesday, the group specifically suggested that within the long-term-care population, residents of nursing homes, who tend to be the most frail and susceptible to Covid, should get the first vaccines in the event that there aren't enough, along with staff members who have not had the virus within the last 90 days.

Within the much larger category of health care workers, the panel said that health systems should consider prioritizing those who have direct contact with patients and their families and those who handle infectious materials. Dr. Nancy Messonnier, who leads the C.D.C.'s National Center for Immunization and Respiratory Diseases, told the panel that based on her recent conversations with state health officials, most states and large cities "believe they can vaccinate all of their health care workers within three weeks."

But whether they reach that goal depends on how much vaccine they get, and how quickly. Gov. Andy Beshear of Kentucky told reporters on Monday that his state had more than 200,000 health care workers but would receive only 38,000 doses in its first shipment and that it might not get another for two weeks.

Long-term-care facilities include nursing homes, with about 1.3 million residents; assisted-living facilities, with 800,000 residents; and residential care facilities, which tend to be small and cater to specific populations. The federal government has contracted with CVS and Walgreens to deliver vaccines to most such facilities nationwide, with teams of pharmacists making three visits to each to ensure that every staff member and resident gets both an initial shot and a booster shot several weeks later.

Several members of the panel urged that small community doctors' offices not be left off the initial priority list. "Transmission dynamics suggest providers who care for patients earlier in their course of illness may be at higher risk," said Dr. Jeffrey Duchin, a member of the panel who is in charge of public health in Seattle and King County, Wash.

Dr. Grace Lee, a panel member and a pediatrics professor at Stanford, said special attention should be paid to health care workers in lower-paying positions, such as nursing assistants, food workers and janitors, who may fear for their job security if they push to secure a spot toward the front of the vaccination line.

"I am very mindful of the equity concerns," Dr. Lee said.

Jan Hoffman contributed reporting.